

SENATE BILL 190

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2003 Regular Session
3lr0005

By: **Chairman, Finance Committee (By Request - Departmental - Health
and Mental Hygiene)**

Introduced and read first time: January 27, 2003

Rules suspended

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 19, 2003

CHAPTER _____

1 AN ACT concerning

2 **Developmentally Disabled Individuals - Medical Assistance and Other**
3 **Services - Eligibility**

4 FOR the purpose of requiring individuals with developmental disabilities to apply for
5 medical assistance and certain services; prohibiting the Developmental
6 Disabilities Administration from using certain funds for certain services under
7 certain circumstances; requiring certain State general funds to be used only to
8 provide community-based initiatives for certain developmentally disabled
9 individuals ~~after a certain date; requiring~~ stating the intent of the General
10 Assembly that certain federal funds ~~to~~ be retained by the Department of Health
11 and Mental Hygiene for certain usage; and generally relating to services
12 provided to individuals with developmental disabilities.

13 BY repealing and reenacting, with amendments,
14 Article - Health - General
15 Section 7-306.1, 7-403, and 7-404
16 Annotated Code of Maryland
17 (2000 Replacement Volume and 2002 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Health - General**

2 7-306.1.

3 (a) (1) The Administration shall develop and implement a funding system
4 for the distribution of State funds to private providers that [are under contract]
5 HAVE A PROVIDER AGREEMENT with the Administration to provide
6 community-based services to individuals with disability in accordance with the State
7 plan.

8 (2) UNDER THE FUNDING SYSTEM DEVELOPED AND IMPLEMENTED
9 UNDER PARAGRAPH (1) OF THIS SUBSECTION, STATE GENERAL FUNDS THAT ARE NOT
10 MATCHED BY FEDERAL FUNDS SHALL ONLY BE USED TO PROVIDE
11 COMMUNITY-BASED SERVICES ~~INITIATED AFTER OCTOBER 1, 2003~~ FOR:

12 (I) INDIVIDUALS WHO ARE NOT ELIGIBLE FOR MEDICAL
13 ASSISTANCE PROGRAM SERVICES UNDER THIS ARTICLE; OR

14 (II) SERVICES THAT ARE NOT AVAILABLE UNDER A MEDICAL
15 ASSISTANCE PROGRAM UNDER THIS ARTICLE.

16 (b) Funds received for services that are fee-for-service or that have rates set
17 by regulation shall be subject to recovery by the Administration only for the following
18 purposes:

19 (1) Client attendance;

20 (2) Client fees; or

21 (3) Sanctions allowed through regulations.

22 (c) (1) Under the funding system developed under subsection (a) of this
23 section, the Administration shall notify each private provider at least 30 days before
24 the beginning of the fiscal year of the billing rate or amount of funds to be paid to the
25 provider for the provision of community-based services to an individual with
26 developmental disability or a group of individuals with developmental disability for
27 the coming fiscal year.

28 (2) For rates that are set in regulation, the Administration shall include
29 the cost centers used to determine the funding amount of each rate.

30 (3) (i) A private provider may request an administrative resolution of
31 a billing rate set under paragraph (1) of this subsection except for rates set in
32 regulation.

33 (ii) Within 60 days after receipt of the provider's request, the
34 Administration shall make a decision on the request for an administrative resolution.

1 (iii) If an administrative resolution cannot be reached between the
2 provider and the Administration, the provider may request an evidentiary hearing or
3 an oral hearing in accordance with regulations of the Department.

4 (d) Subject to the provisions of subsections (e), (f), and (g) of this section, the
5 Administration shall provide payment to private providers for the services provided
6 from the funds designated in subsection (c) of this section in accordance with the
7 following payment schedule:

8 (1) On or before the third business day of the fiscal quarter beginning
9 July 1, 33% of the total annual amount to be paid to the provider;

10 (2) On or before the third business day of the fiscal quarter beginning
11 October 1, 25% of the total annual amount to be paid to the provider;

12 (3) On or before the third business day of the fiscal quarter beginning
13 January 1, 25% of the total annual amount to be paid to the provider; and

14 (4) On or before the third business day of the fiscal quarter beginning
15 April 1, 17% of the total annual amount to be paid to the provider.

16 (e) The Administration may deviate from the payment schedule provided
17 under subsection (d) of this section for any provider:

18 (1) That is reimbursed through the fee payment system and fails to
19 submit properly completed program attendance reports within 15 days of the
20 beginning of each month;

21 (2) That provides services under the medical assistance program and
22 fails to submit the designated forms used by the medical assistance program to claim
23 federal fund participation within 30 days after the end of each month; or

24 (3) That fails to submit a cost report for rate-based payment systems or
25 wage surveys as required under subsection ~~{(k)}~~ ~~(L)~~ of this section.

26 (f) A deviation from the payment schedule as provided under subsection (e) of
27 this section may occur only if the Administration has:

28 (1) Advised the provider that:

29 (i) An attendance report which has been submitted on time is in
30 need of correction;

31 (ii) A designated medical assistance form which has been submitted
32 on time is in need of correction;

33 (iii) A cost report for rate-based payment systems has not been
34 submitted within 6 months from the close of the fiscal year or, if submitted, is in need
35 of correction; or

1 (iv) A wage survey requested under subsection ~~{(1)}~~ ~~(M)~~ of this
2 section has not been submitted by the later of 60 days from the date of receipt of the
3 request or within 60 days after the last day of the pay period for which the data was
4 requested or, if submitted, is in need of correction.

5 (2) Allowed the provider at least 5 working days to submit, resubmit or
6 correct the report or form; and

7 (3) Not in any way contributed to the delay of or error on a report or
8 form.

9 (g) The amount of a reduction of payments to a provider pursuant to
10 subsections (e) and (f) of this section may not:

11 (1) Exceed the amount of lost federal revenue attributable to the delay or
12 error; or

13 (2) In the case of cost reports for rate-based payment systems or wage
14 surveys, exceed \$500 per day per report for each day the report is not submitted past
15 the given due date or corrected.

16 (h) The Administration:

17 (1) Shall place sufficient funds in a specially designated account with the
18 Office of the Comptroller to meet its financial obligations under subsection (d) of this
19 section;

20 (2) Shall disburse funds from the account in accordance with the
21 payment schedule provided in subsection (d) of this section;

22 (3) May not use the funds in the account for any other purpose except for
23 the purpose of reimbursing private providers for the provision of community-based
24 services to individuals with developmental disability;

25 (4) MAY NOT USE NONMATCHED STATE GENERAL FUNDS FOR ANY
26 PERIOD IN WHICH FEDERAL MATCHING FUNDS ARE AVAILABLE FOR AN INDIVIDUAL
27 RECEIVING SERVICES;

28 ~~[(4)]~~ (5) Within 1 year after receipt of a private provider's year-end
29 report and cost report for rate-based payment systems, shall reconcile the report and
30 shall provide the provider with a written approval of the report or a written
31 explanation of any items in dispute; and

32 ~~[(5)]~~ (6) Shall conduct an audit of each private provider every 4 years.

33 ~~(4) ANY ADDITIONAL FUNDS GENERATED BY AN INCREASE IN FEDERAL~~
34 ~~FINANCIAL PARTICIPATION SHALL BE RETAINED WITHIN THE BUDGET OF THE~~
35 ~~DEPARTMENT OF HEALTH AND MENTAL HYGIENE FOR PROGRAMMATIC USAGE FOR~~
36 ~~INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.~~

1 ~~{i)}~~ ~~(I)~~ The Administration shall accept as final the private provider's
2 year-end report and cost report for rate-based payment systems if:

3 (1) The Administration fails to provide written approval or a written
4 explanation of any items in dispute within 1 year after receiving the report; or

5 (2) The Administration fails to reconcile the year-end report and cost
6 report for rate-based payment systems within 1 year after receiving the report.

7 ~~{j)}~~ ~~(K)~~ If the Administration fails to conduct an audit of a private provider as
8 required in subsection [(h)(5)] (H)(6) of this section, the Administration may not audit
9 the private provider for any fiscal year that began more than 48 months before the
10 Administration's notification of audit, unless the Administration suspects fraud or
11 misappropriation of funds.

12 ~~{k)}~~ ~~(L)~~ Private providers shall provide the year-end report to the
13 Administration no later than 6 months after the end of the State fiscal year.

14 ~~{l)}~~ ~~(M)~~ Private providers shall submit to the Administration:

15 (1) Cost reports for rate-based payment systems no later than 6 months
16 after the end of the State fiscal year; and

17 (2) Wage surveys by the later of:

18 (i) 60 days after the last day of the pay period for which the data is
19 requested; or

20 (ii) 60 days after receipt of a request from the Administration for
21 wage survey information.

22 7-403.

23 (a) An applicant for services provided or funded, wholly or partly, by this State
24 shall submit an application to the Department in writing. The application shall
25 contain the information that the Department requires.

26 (b) Within 60 days after the Department receives an application for services
27 for an individual, the Secretary, on the basis of the application, shall:

28 (1) Determine whether there is a reasonable likelihood that the
29 individual:

30 (i) Has developmental disability; or

31 (ii) Does not have developmental disability, but may be eligible for
32 individual support services under subsection ~~(e)~~ (D) of this section; and

33 (2) If a positive determination is made under item (i) or (ii) of paragraph
34 (1) of this subsection:

- 1 (i) Approve the application;
- 2 (ii) Determine the nature of the disability;
- 3 (iii) Determine the nature of services that the individual may
4 require;
- 5 (iv) Determine the type of environment in which any needed
6 services could be provided with the least restriction on the liberty of the individual;
- 7 (v) Determine what types of evaluations, if any, the individual
8 requires;
- 9 (vi) Inform the individual of these determinations; and
- 10 (vii) Inform the individual that these determinations are
11 preliminary and may be subject to modification as a result of further evaluation.

12 (C) TO BE ELIGIBLE FOR SERVICES PROVIDED BY THE ADMINISTRATION, AN
13 INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY SHALL APPLY FOR MEDICAL
14 ASSISTANCE UNDER THE PROGRAM ESTABLISHED UNDER TITLE 15 OF THIS ARTICLE
15 AND, WHEN APPROPRIATE, AS DETERMINED BY THE DEPARTMENT, SERVICES
16 FUNDED BY THE HOME AND COMMUNITY-BASED WAIVER UNDER § 15-132 OF THIS
17 ARTICLE:

- 18 (1) IF POSSIBLE, BEFORE THE INITIATION OF SERVICES; OR
- 19 (2) NO LATER THAN 30 DAYS AFTER THE INITIATION OF SERVICES.

20 [(c)] (D) To be eligible for individual support services, an individual shall have
21 a severe chronic disability that:

- 22 (1) Is attributable to a physical or mental impairment, other than the
23 sole diagnosis of mental illness, or to a combination of mental and physical
24 impairments; and
- 25 (2) Is likely to continue indefinitely.

26 [(d)] (E) If the Secretary determines, based on the application, that the
27 individual has a sole diagnosis of mental disorder, the Secretary shall refer the
28 individual to the Mental Hygiene Administration.

29 7-404.

30 (a) Before an individual whose application for services has been approved by
31 the Secretary is accepted for services, the individual is required to receive an
32 evaluation in accordance with the rules and regulations adopted under § 7-401(a)(1)
33 of this subtitle.

34 (b) The Secretary may not accept an individual for services unless the results
35 of the evaluation are that the individual:

- 1 (1) Has developmental disability; or
- 2 (2) Does not have developmental disability, but does meet the eligibility
3 requirements for individual support services.

4 (c) (1) From among the individuals whose applications for services have
5 been approved and who have been found eligible for services as a result of the
6 required evaluation, the Secretary shall determine in accordance with the rules and
7 regulations adopted under § 7-401(a)(2) and (3) of this subtitle the nature, extent,
8 and timing of the services to be provided to individuals.

9 (2) In making a determination under paragraph (1) of this subsection,
10 the Secretary shall consider:

- 11 (i) The results of the required evaluation;
- 12 (ii) The needs of the individual; and
- 13 (iii) The needs of the family unit of the applicant.

14 (3) AN INDIVIDUAL MAY NOT ACCESS SERVICES THAT ARE FUNDED BY
15 NONMATCHED STATE GENERAL FUNDS IF THE SAME SERVICES CAN BE FUNDED
16 UNDER THE MEDICAL ASSISTANCE PROGRAM, INCLUDING THE HOME AND
17 COMMUNITY-BASED WAIVER PROGRAM.

18 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
19 General Assembly that the Governor retain any additional funds generated by an
20 increase in federal financial participation under this Act, within the budget of the
21 Department of Health and Mental Hygiene for programmatic use for individuals with
22 developmental disabilities.

23 ~~SECTION 3.~~ SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
24 effect October 1, 2003.